

Bill 181 2011

An Act to amend the Fire Protection and Prevention Act, 1997

Note: This Act amends the Fire Protection and Prevention Act, 1997. For the legislative history of the Act, see the Table of Consolidated Public Statutes – Detailed Legislative History at www.e-Laws.gov.on.ca.

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. The Fire Protection and Prevention Act, 1997 is amended by adding the following sections:

Duty of Fair Representation

Duty of fair representation by bargaining agent

46.1 (1) A bargaining agent entitled to represent firefighters in a bargaining unit shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the firefighters in the unit, whether or not they are members of the bargaining agent.

Transition

(2) This section does not apply in respect of any conduct or events that occurred before December 1, 2011.

Inquiry, alleged contravention

46.2 (1) The Board may authorize a labour relations officer to inquire into any complaint alleging a contravention of section 46.1.

Duties

(2) The labour relations officer shall promptly inquire into the complaint and endeavour to effect a settlement of the matter complained of.

Report

(3) The labour relations officer shall report the results of his or her inquiry and endeavours to the Board.

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Inquiry by Board

- (4) If the labour relations officer is unable to effect a settlement of the matter complained of or if the Board considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint.

Remedy for contravention

- (5) If the Board inquires into the complaint and is satisfied that a bargaining agent has failed to comply with section 46.1, the Board shall determine what, if anything, the bargaining agent, the employer or any other person shall do or refrain from doing with respect to the contravention, including, despite the provisions of any collective agreement,
 - (a) ceasing to do the act or acts complained of;
 - (b) rectifying the act or acts complained of;
 - (c) in the case of the bargaining agent, compensating the firefighter for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the bargaining agent; or
 - (d) in the case of the employer,
 - (i) reinstating the firefighter in employment with compensation for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer,
 - (ii) reinstating the firefighter in employment, without compensation, or
 - (iii) compensating the firefighter for loss of earnings or other employment benefits in an amount that may be assessed by the Board against the employer, without reinstatement.

Filing in court

- (6) A bargaining agent, employer, firefighter or other person affected by the Board's determination under subsection (5) may file the determination, excluding the reasons, in the prescribed form in the Superior Court of Justice and the determination shall be entered and is enforceable in the same way as an order of that court.

Effect of settlement

- (7) If a complaint under this section has been settled, whether through the endeavours of the labour relations officer or otherwise, and the terms of the settlement have been put into writing and signed by the parties or their representatives, the settlement is binding upon the parties and the bargaining agent, employer, firefighter or other person who agreed to the settlement and shall be complied with according to its terms.

Failure to comply

- (8) A complaint that the parties or the bargaining agent, employer, firefighter or other person who agreed to the settlement of a complaint under this section has not complied

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with the terms of the settlement shall be dealt with as a new complaint under this section.

Board power re interim orders

46.3 (1) Subject to subsection (2), on application by any party to a pending inquiry under section 46.2, the Board may make any interim order it considers appropriate concerning procedural matters.

No reinstatement

(2) The Board shall not make an interim order requiring an employer to reinstate a firefighter in employment.

No power under SPPA

(3) The Board's power to make interim orders under this section applies instead of the power under subsection 16.1 (1) of the Statutory Powers Procedure Act.

Expedited enforcement

46.4 (1) This section applies when the Board receives a complaint that a bargaining agent has failed to comply with its duty under section 46.1.

Withdrawal of complaint

(2) A complaint described in subsection (1) may be withdrawn by the complainant on conditions determined by the Board.

No hearing

(3) The Board is not required to hold a hearing to determine a complaint under this section.

Interim orders

(4) Subject to subsection (5), the Board may, after consulting with the parties, make any interim order it considers appropriate concerning procedural matters.

No reinstatement

(5) The Board shall not make an interim order requiring an employer to reinstate a firefighter in employment.

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Cease and desist orders

- (6) In an interim order or after making an interim order, the Board may order any bargaining agent, employer, firefighter or any other person to cease and desist from doing anything intended or likely to interfere with the terms of an interim order respecting the assignment of work.

Final orders

- (7) The Board may, after consulting with the parties, make any final order it considers appropriate.

Filing in court

- (8) A party to an interim or final order may file the order, excluding the reasons, in the prescribed form in the Superior Court of Justice and the order shall be entered and is enforceable in the same way as an order of that court.

Enforcement

- (9) An order that has been filed with the court is enforceable by a firefighter affected by it on the day after the date fixed in the order for compliance.

Interim orders prevail

- (10) A bargaining agent, employer, firefighter or any other person affected by an interim order made by the Board under this section shall comply with the order despite any provision of this Part or of any collective agreement.

Same

- (11) A bargaining agent, employer, firefighter or any other person who is complying with an interim order made by the Board under this section is deemed not to have violated any provision of this Part or of any collective agreement.

Proceedings in Superior Court of Justice

46.5 If a bargaining agent, employer, firefighter or any other person is affected by a determination of the Board under section 46.2, an interim order of the Board under section 46.3 or an interim or final order of the Board under section 46.4, proceedings to enforce the determination or the interim or final order may be instituted in the Superior Court of Justice by or against the bargaining agent, employer, firefighter or any other person who is subject to the determination or order.

2. The Act is amended by adding the following section:

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Mandatory retirement

Application

53.1 (1) This section applies to a firefighter only if the firefighter is regularly assigned to fire suppression duties.

Mandatory retirement provision permitted

(2) A collective agreement may contain a provision requiring firefighters to retire at a specified age of 60 or over and, if it does, a firefighter subject to the agreement shall, subject to subsection (4), retire at the specified age.

Existing and new collective agreements

(3) Subsection (2) applies to collective agreements that are in operation on the day section 2 of the Fire Protection and Prevention Amendment Act, 2011 comes into force and to collective agreements that come into force after that day.

Reasonable accommodation

(4) A firefighter shall not be required to retire if the firefighter can be accommodated without undue hardship, considering the cost, outside sources of funding, if any, and health and safety requirements, if any.

Human Rights Code

(5) This section applies despite the Human Rights Code.

3. Section 53.1 of the Act, as enacted by section 2, is amended by adding the following subsection:

Deemed mandatory retirement provision

(3.1) If a collective agreement does not contain a provision requiring firefighters to retire at a specified age or if it contains a provision requiring firefighters to retire at an age under 60, the agreement is deemed to contain a provision requiring firefighters to retire at the age of 60 and a firefighter subject to the agreement shall, subject to subsection (4), retire at that age.

4. Section 57 of the Act is amended by adding the following clause:

(c) prescribing forms for the purposes of subsections 46.2 (6) and 46.4 (8).

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Commencement

5. (1) Subject to subsections (2) and (3), this Act comes into force on the day it receives Royal Assent.

Same

- (2) Sections 1 and 4 come into force on December 1, 2011.

Same

- (3) Section 3 comes into force on the second anniversary of the day this Act receives Royal Assent.

Short title

6. The short title of this Act is the Fire Protection and Prevention Amendment Act, 2011.

EXPLANATORY NOTE

This Explanatory Note was written as a reader's aid to Bill 181 and does not form part of the law. Bill 181 has been enacted as Chapter 13 of the Statutes of Ontario, 2011.

The Bill makes several amendments to the Fire Protection and Prevention Act, 1997.

Section 46.1, which imposes a duty of fair representation on bargaining agents for firefighters, and sections 46.2, 46.3, 46.4 and 46.5, which provide mechanisms for enforcing the duty, are added to the Act. These provisions come into force on December 1, 2011.

Section 53.1, which deals with mandatory retirement for firefighters who are regularly assigned to fire suppression duties, is added to the Act. A collective agreement may include a provision requiring such firefighters to retire at a specified age of 60 or over. Such firefighters shall retire at the age specified in their collective agreement, unless they can be accommodated without undue hardship.

After a two-year period, an additional element will take effect: collective agreements that do not contain mandatory retirement provisions, or that provide for a mandatory retirement age under 60, will be deemed to contain a provision requiring retirement at the age of 60.

Section 53.1 applies despite the Human Rights Code.